

1 Michael Kind, Esq.
2 NV Bar No. 13903
3 **KAZEROUNI LAW GROUP, APC**
4 7854 W. Sahara Avenue
5 Las Vegas, NV 89117
6 Phone: (800) 400-6808 x7
7 FAX: (800) 520-5523
8 mkind@kazlg.com

7 Sara Khosroabadi, Esq.
8 NV Bar No. 13703
9 **HYDE & SWIGART**
10 7854 W. Sahara Avenue
11 Las Vegas, NV 89117
12 Phone: (619) 233-7770
13 Fax: (619) 297-1022
14 sara@westcoastlitigation.com

13 *Attorneys for Plaintiff,*
14 John Hastings

15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF NEVADA**

17 JOHN HASTINGS,
18 INDIVIDUALLY AND ON
19 BEHALF OF ALL OTHERS
20 SIMILARLY SITUATED,

21 Plaintiff,

22 v.

23 FINANCIAL CORPORATION OF
24 AMERICA,

25 Defendant.

Case No.:

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE TELEPHONE
CONSUMER PROTECTION ACT,
47 U.S.C. § 227, ET SEQ.**

JURY TRIAL DEMANDED

INTRODUCTION

1. JOHN HASTINGS (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of FINANCIAL CORPORATION OF AMERICA (“Defendant”) in negligently and/or intentionally contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. §§ 227 *et seq.*, (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.
2. The TCPA was designed to prevent calls like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that:

[b]anning such *automated* or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. at § 12 (emphasis added); *see also Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at *4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s purpose).

4. Congress also specifically found that “the evidence presented to the Congress indicates that *automated* or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. *See also, Mims*, 132 S. Ct. at 744 (emphasis added.)
5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA case regarding calls similar to this one:

The Telephone Consumer Protection Act ... is well known for its provisions limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637, 638 (7th Cir. 2012).

6. The Ninth Circuit recently affirmed certification of a TCPA class case similar to this one in *Meyer v. Portfolio Recovery Associates, LLC*, ___ F.3d ___, 2012 WL 4840814 (9th Cir. Oct. 12, 2012).

JURISDICTION AND VENUE

7. This Court has federal question jurisdiction because this case arises out of violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).
8. Venue is proper in the United States District Court for the District of Nevada pursuant to 18 U.S.C. § 1391(b) because the harm to Plaintiff occurred

1 within the State of Nevada, and Defendant is subject to personal jurisdiction
2 in the County of Clark, State of Nevada as it conducts business there.

3 **PARTIES**

4 9. Plaintiff is, and at all times mentioned herein was, a citizen and resident of
5 the State of Nevada. Plaintiff is, and at all times mentioned herein was, a
6 “person” as defined by 47 U.S.C. § 153 (39).

7 10. Plaintiff is informed and believes, and thereon alleges, that Defendant is a
8 Nevada corporation with its principal place of business in Austin, Texas.
9 Defendant is, and at all times mentioned herein was, a “person” as defined
10 by 47 U.S.C. § 153 (39).

11 11. Plaintiff alleges that at all times relevant herein Defendant conducted
12 business in the State of Nevada and within this judicial district.

13 **FACTUAL ALLEGATIONS**

14 12. At all times relevant, Plaintiff was a citizen of the State of Nevada. Plaintiff
15 is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C.
16 § 153 (39).

17 13. Defendant is, and at all times mentioned herein was, a corporation and a
18 “person,” as defined by 47 U.S.C. § 153 (39).

19 14. At all times relevant Defendant conducted business in the State of Nevada
20 and within this judicial district.

21 15. At no time did Plaintiff provide Plaintiff’s cellular phone number to
22 Defendant through any medium.

23 16. At no time did Plaintiff ever enter in a business relationship with Defendant.

24 17. On or about August 18, 2015, at approximately 8:46 a.m. PST, Defendant
25 contacted Plaintiff’s cellular telephone number ending in “1539” from
26 telephone number (800) 950-5762.

1 18. On or about September 2, 2015, at approximately 7:21 p.m. PST, Defendant
2 contacted Plaintiff's cellular telephone number ending in "1539" from
3 telephone number (800) 950-5762.

4 19. On or about September 8, 2015, at approximately 6:21 p.m. PST, Defendant
5 contacted Plaintiff's cellular telephone number ending in "1539" from
6 telephone number (800) 950-5762.

7 20. On or about October 6, 2015, at approximately 11:29 a.m. PST, Defendant
8 contacted Plaintiff's cellular telephone number ending in "1539" from
9 telephone number (800) 950-5762.

10 21. On or about October 20, 2015, at approximately 10:59 a.m. PST, Defendant
11 contacted Plaintiff's cellular telephone number ending in "1539" from
12 telephone number (800) 950-5762.

13 22. On or about December 23, 2015, at approximately 9:48 a.m. PST, Defendant
14 contacted Plaintiff's cellular telephone number ending in "1539" from
15 telephone number (800) 950-5762.

16 23. On or about January 13, 2016, at approximately 2:00 p.m. PST, Defendant
17 contacted Plaintiff's cellular telephone number ending in "1539" from
18 telephone number (800) 950-5762.

19 24. On or about February 10, 2016, at approximately 4:32 p.m. PST, Defendant
20 contacted Plaintiff's cellular telephone number ending in "1539" from
21 telephone number (800) 950-5762.

22 25. On or about February 20, 2016, at approximately 2:23 p.m. PST, Defendant
23 contacted Plaintiff's cellular telephone number ending in "1539" from
24 telephone number (800) 950-5762.

25 26. On or about March 2, 2016, at approximately 10:59 a.m. PST, Defendant
26 contacted Plaintiff's cellular telephone number ending in "1539" from
27 telephone number (800) 950-5762.
28

1 27. Defendant continues to place unwanted and unsolicited calls to Plaintiff's
2 cellular telephone.

3 28. Through these numerous unsolicited and unwanted telephone calls,
4 Defendant was attempting to collect an alleged debt allegedly owed to
5 Defendant by Plaintiff.

6 29. Through this conduct, Defendant contacted Plaintiff's cellular telephone via
7 an "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C.
8 § 227(a)(1) and prohibited by 47 U.S.C. § 227(b)(1)(A), using an artificial or
9 prerecorded voice message as prohibited by 47 U.S.C. § 227(b)(1)(A), in an
10 attempt to collect allegedly owed debt.

11 30. This ATDS has the capacity to, and does, place calls without human
12 intervention to telephone numbers stored as a list or in a database.

13 31. The telephone number Defendant called was assigned to a cellular telephone
14 service for which Plaintiff incurs a charge for incoming calls pursuant to 47
15 U.S.C. § 227(b)(1).

16 32. The telephone calls constitutes calls that were not for emergency purposes as
17 defined by 47 U.S.C. § 227(b)(1)(A)(i).

18 33. Plaintiff did not provide Defendant or its agent prior express consent to
19 receive calls to his cellular telephone, including by means of ATDS and/or
20 artificial or prerecorded voice message, pursuant to 47 U.S.C. § 227
21 (b)(1)(A).

22 34. These telephone calls by Defendant, or its agent, violated 47 U.S.C. §
23 227(b)(1)(A)(iii).

24 35. Plaintiff's cellular telephone number had been registered on the National Do
25 Not Call Registry since August 27, 2015.
26
27
28

CLASS ACTION ALLEGATIONS

36.Plaintiff brings this action on behalf of himself and on behalf of all others similarly situated (“the Class”).

37.Plaintiff represents, and is a member of the Class, consisting of:

All persons within the United States who received any telephone call/s from Defendants or their agent/s and/or employee/s to said person’s cellular telephone made through the use of any automatic telephone dialing system or with an artificial or prerecorded voice within the four years prior to the filing of the Complaint.

38.Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the number of members in the Class, but believes the Class members number in the several hundreds, if not substantially more. Thus, this matter should be certified as a Class action to assist in the expeditious litigation of this matter.

39.Plaintiff and members of the Class were harmed by the acts of Defendant in at least the following ways: Defendant, either directly or through its agents, illegally contacted Plaintiff and the Class members via their cellular telephones by using an ATDS and/or artificial or prerecorded voice message, thereby causing Plaintiff and the Class members to incur certain cellular telephone charges or reduce cellular telephone time for which Plaintiff and the Class members previously paid, and invading the privacy of said Plaintiff and the Class members. Plaintiff and the Class members were damaged thereby.

40.This suit seeks only damages and injunctive relief for recovery of economic injury on behalf of the Class, and it expressly is not intended to request any recovery for personal injury and claims related thereto. Plaintiff reserves the right to expand the Class definition to seek recovery on behalf of additional

1 persons as warranted as facts are learned in further investigation and
2 discovery.

3 41. The joinder of the Class members is impractical and the disposition of their
4 claims in the Class action will provide substantial benefits both to the parties
5 and to the court. The Class can be identified through Defendant's records or
6 Defendant's agents' records.

7 42. There is a well-defined community of interest in the questions of law and
8 fact involved affecting the parties to be represented. The questions of law
9 and fact to the Class predominate over questions which may affect
10 individual Class members, including the following:

- 11 a) Whether, within the four years prior to the filing of this Complaint,
12 Defendant or its agents made automated and/or artificial or
13 prerecorded calls to the Class (other than a message made for
14 emergency purposes or made with the prior express consent of the
15 called party) using any automatic dialing system to any telephone
16 number assigned to a cellular phone service;
- 17 b) Whether Plaintiff and the Class members were damaged thereby, and
18 the extent of damages for such violation; and
- 19 c) Whether Defendant and its agents should be enjoined from engaging
20 in such conduct in the future.

21 43. As a person that received at least one call utilizing an ATDS and/or artificial
22 or prerecorded voice message without Plaintiff's prior express consent,
23 Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly
24 and adequately represent and protect the interests of the Class in that
25 Plaintiff has no interests antagonistic to any member of the Class.

26 44. Plaintiff and the members of the Class have all suffered irreparable harm as
27 a result of the Defendant's unlawful and wrongful conduct. Absent a class
28 action, the Class will continue to face the potential for irreparable harm. In

1 addition, these violations of law will be allowed to proceed without remedy
2 and Defendant will likely continue such illegal conduct. Because of the size
3 of the individual Class member's claims, few, if any, Class members could
4 afford to seek legal redress for the wrongs complained of herein.

5 45. Plaintiff has retained counsel experienced in handling class action claims
6 and claims involving violations of the Telephone Consumer Protection Act.

7 46. A class action is a superior method for the fair and efficient adjudication of
8 this controversy. Class-wide damages are essential to induce Defendant to
9 comply with federal and California law. The interest of Class members in
10 individually controlling the prosecution of separate claims against Defendant
11 is small because the maximum statutory damages in an individual action for
12 violation of privacy are minimal. Management of these claims is likely to
13 present significantly fewer difficulties than those presented in many class
14 claims.

15 47. Defendant has acted on grounds generally applicable to the Class, thereby
16 making appropriate final injunctive relief and corresponding declaratory
17 relief with respect to the Class as a whole.

18 **FIRST CAUSE OF ACTION**

19 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

20 **47 U.S.C. § 227 ET SEQ.**

21 48. Plaintiff incorporates by reference all of the above paragraphs of this
22 Complaint as though fully stated herein.

23 49. The foregoing acts and omissions of Defendant constitute numerous and
24 multiple negligent violations of the TCPA, including but not limited to each
25 and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

26 50. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*,
27 Plaintiff and The Class are entitled to an award of \$500.00 in statutory
28 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

1 51.Plaintiff and the Class are also entitled to and seek injunctive relief
2 prohibiting such conduct in the future.

3 **SECOND CAUSE OF ACTION**

4 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
5 **TELEPHONE CONSUMER PROTECTION ACT**
6 **47 U.S.C. § 227 ET SEQ.**

7 52.Plaintiff incorporates by reference all of the above paragraphs of this
8 Complaint as though fully stated herein.

9 53.The foregoing acts and omissions of Defendant constitute numerous and
10 multiple knowing and/or willful violations of the TCPA, including but not
11 limited to each and every one of the above-cited provisions of 47 U.S.C. §
12 227 et seq.

13 54.As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
14 227 et seq., Plaintiff and The Class are entitled to an award of \$1,500.00 in
15 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
16 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

17 55.Plaintiff and the Class are also entitled to and seek injunctive relief
18 prohibiting such conduct in the future.

19 **PRAYER FOR RELIEF**

20 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and the
21 Class members the following relief against Defendant:

22 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
23 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 24 • As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1),
25 Plaintiff seeks for himself and each Class member \$500.00 in statutory
26 damages, for each and every violation, pursuant to 47 U.S.C. §
27 227(b)(3)(B).
28

- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Post-judgment interest.
- Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATIONS OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Post-judgment interest.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

56. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: March 4, 2016

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ Michael Kind
Michael Kind
ATTORNEY FOR PLAINTIFF